

The Law Society of Manitoba Decision No 20220718

Decision No 20220718

THE LAW SOCIETY OF MANITOBA
TRUST SAFETY APPEALS COMMITTEE

IN THE MATTER OF:

Member B

Appellant

AND IN THE MATTER OF:

A DECISION OF THE AUDITOR-INSPECTOR
as delegate of the Chief Executive Officer
Dated June 13, 2022

PANEL:

Anthony Kavanagh, Chairperson
Mathieu Lafreniere, Bencher and Practising Member
Sandra Oakley, Public Representative

HEARING DATE:

July 18, 2022

APPEARANCES:

Ayli Klein, for the Law Society of Manitoba
Member B, Self-Represented

Appeal pursuant to Law Society Rule 5-42.3(1)

Appeal based on written submissions pursuant to The Trust Safety Program Guideline and The Trust Safety Program Appeal Guideline

REASONS FOR DECISION

I. INTRODUCTION AND REGULATORY FRAMEWORK:

1. By Notice of Appeal dated June 27, 2022, member of the Law Society ("LSM") Member B appeals a decision of the Law Society's Chief Executive Officer, dated June 13, 2022, revoking Member B's status of Trust Account Supervisor ("TAS"). The member requested an Expedited Appeal.
2. This appeal is brought before the panel under the *Rules of the Law Society of Manitoba* (Part 5, Division 4 – Financial Accountability). The panel was duly constituted under Rule 5-42.2(1) and (2) and the associated *Trust Safety Program Guidelines* (the "TSP Program Guideline") and the *Trust Safety Program Appeal Guidelines* (the "TSP Appeal Guideline").
3. Pursuant to the TSP Appeal Guideline, the appeal proceeded via the submission of a Record and written submissions (collectively the "appeal materials"). The Record consisted of e-mails, letters, and memorandums. The parties submitted written submissions and authorities on July 13, 2022 (LSM) and July 15, 2022 (Member B).
4. Each of the panel members thoroughly reviewed all of the appeal materials and then met on July 18, 2022 to discuss the evidence and written submissions.
5. The Law Society's Trust Safety Program ("TSP") reflected in the Financial Accountability Rules, first introduced in 2019, applies to members of the Law Society designated by their law firms (which includes sole practitioners) as operating trust accounts. The Rules reflect the specific responsibilities of a TAS.
6. Whether or not Member B complied with their responsibilities as a TAS, and whether they should be permitted to continue to serve as a TAS, is the focus of this appeal.

II. FACTUAL BACKGROUND:

7. The facts reflected in the appeal materials are relatively straightforward and are mainly non-contentious.

8. Member B is a member of the LSM. Member B is a sole practitioner in general practice including real estate and litigation matters that requires a trust account for operational realities. Their office is located in southern Manitoba.
9. Member B did not submit the Annual Member Report ("AMR") for 2021 by the deadline of April 1, 2022 as required by all members. The report includes a portion relating to duties as a Trust Account Supervisor.
10. Member B received electronic reminders on January 11, 2022, February 9, 2022, March 9, 2022 and March 23, 2022. These were sent prior to the due date of the AMR.
11. Reminders were sent April 6, 2022 and April 20, 2022. There was no response from these reminders sent after the deadline until a phone call made to their office on April 20, 2022.
12. Sandra Alleyne ("Ms Alleyne"), Auditor-Inspector, spoke with Member B on April 20, 2022 about the importance of completing the report. Member B indicated that they had not completed the report because they were worried about the educational hours that had not been completed.
13. Member B was advised to contact the appropriate personnel at the Law Society concerning that issue.
14. Ms Alleyne left a further voicemail on May 4, 2022, and an e-mail of May 5, 2022 to which there was no response. She requested that at least the TAS section of the AMR be provided by May 6, 2022.
15. On May 10, 2022, a further letter was sent requesting the materials with a warning that failure could result in the loss of the TAS status.
16. There was still no response and so on June 13, 2022 Ms Alleyne advised Member B that the CEO had, in consultation about the matter and the contents of the May 10, 2022 correspondence *et al*, revoked Member B's TAS status.
17. The appeal materials before the panel reveal that Member B had been operating as a sole practitioner for approximately 3 years and had some difficulty finding administrative staff that they felt could capably and appropriately handle the accounting and reconciliation aspects. Consequently, Member B had been handling all aspects themselves, described as stressful.
18. After a spot audit in 2021, Member B eventually had some support from an articling student to attempt to correct and maintain the trust accounts.

19. The Audit Department's, Ms Alleyne, worked with Member B in 2021 after a spot audit to put them in compliance with the LSM's Rules governing the maintenance of financial records, including trust account records.
20. The appeal materials reveal that the Audit Department continued to take a remedial approach to Member B's challenges up to and including May of 2022 including suggesting that at least the TAS portion of the AMR be completed.
21. In the submission on appeal dated July 15, 2022, Member B provided further information regarding their practice. Member B seeks a degree of leniency due to the fact that they will have significant practical difficulties in business operations especially with respect to the litigation and real estate files as regular money transfers are required. Moreover, Member B states that they have lost business as a result of not being able to maintain a trust account since June 13, 2022, and that the difficulty will impact both the operational but also the payment from current retainers.
22. Member B is the sole support for the family unit.
23. Member B voluntarily confirms that they have been anxious in dealing with the TAS responsibilities and have an underlying problem with anxiety. Member B had received help from a medical doctor and has been taking prescribed medication since 2021.
24. Member B also advised that they did not file the AMR because they had been short on meeting the educational requirements and were concerned of those consequences, not necessarily the TAS aspects.
25. Member B also advised that they recognize the need to shift the nature of their practice and are seeking to join another firm potentially.
26. Member B is requesting that the panel set aside the decision under appeal on leniency grounds.

III. JURISDICTION, PROCESS AND RULES:

27. The amendments to Part 5, Division 4 of the Rules, creating the TSP, came into effect on April 1, 2019. The TSP requires approval by the Law Society of a TAS designate for every firm maintaining a trust account (which in this context includes a sole practitioner such as Member B). The TSP Program Guideline requires the completion of an educational test prior to approval as a TAS.

28. The Law Society's mandate for protection of the public in the delivery of legal services is inherent in Part 5 of the Rules (of which Division 4 "Financial Accountability" and the TSP requirements are a part) and the Law Society's entire regulatory scheme.¹
29. The AMR requirement is one tool to allow the LSM to meet its obligation to review and regulate the state of lawyers and law firms.
30. The panel notes that there is no suggestion of impropriety or wrongdoing through *improper use* of client monies in Member B's case.

IV. STANDARD OF REVIEW:

31. We carefully reviewed the submissions on this point. We concur with counsel for the Law Society that (as described in the next section) the appeal cannot succeed on even the most rigid standard or review.

V. ANALYSIS:

32. The materials demonstrate that:
 - Member B had been spot audited in 2021 and ongoing assistance and communication was provided to assist them with the financial obligations as a sole practitioner and duties as a TAS, offering a remedial approach;
 - Member B was given several opportunities to comply, and ignored all e-mails and voicemails that appeared designed to assist them;
 - Member B was given the opportunity to at least complete the TAS portion of the AMR pending the full Report, and did not do so.
33. The panel understands and has empathy with Member B's personal circumstances and give careful consideration to Member B's request for

¹ See also *The Legal Profession Act*, <https://web2.gov.mb.ca/laws/statutes/ccsm/1107e.php>

Purpose

3(1)

The purpose of the society is to uphold and protect the public interest in the delivery of legal services with competence, integrity and independence.

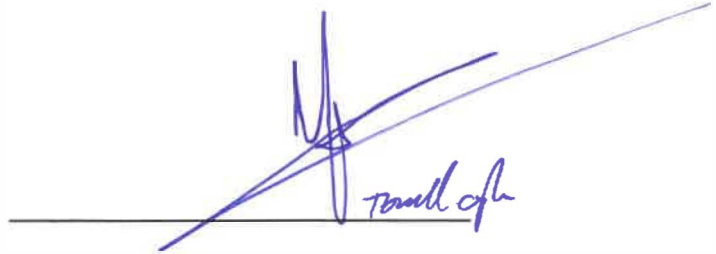
leniency noting their diagnosed anxiety, and the various resulting operational and practical difficulties.

34. The provision of the AMR is neither trite nor voluntary. The TAS has a particularly important role in the function of the Financial Rules and Regulation of members. After all, it is part of the umbrella of tools by which to ensure Protection of the Public. The public must have confidence that their monies held in trust by lawyers are protected. The AMR adds a level of importance when being completed by the TAS as it requires information they alone are responsible for reporting, in this case, for 2021.
35. Counsel for the LSM pointed out that the continued actions of Member B in ignoring their obligations, ignoring the e-mails, voicemails and letters from the LSM was bordering the concerns of "governability".
36. This was a context for the panel's deliberations. The panel was concerned that the member appeared to frequently "avoid" issues rather than dealing with them. This was a concern that leniency would simply not address in protecting the public.
37. In balancing the public interest and the interests of Member B, the panel considered the harm to Member B and noted the following:
 - The removal of their TAS status would not impair their ability to practice nor prevent them from maintaining a trust account should a different TAS be approved to assist the member - it need not be someone from the member's own firm;
 - Nothing prevents Member B from reapplying to be a TAS in the future.

VI. CONCLUSION AND DISPOSITION

38. In the result the panel accepts the decision of the Law Society's CEO (by her delegate the Auditor-Inspector) to revoke Member B's approval as a Trust Account Supervisor.
39. We hereby dismiss the appeal.
40. The panel wishes to thank Member B and counsel for the Law Society for their evident cooperation in the preparation and presentation of the Record, additional evidence, and submissions, all of which were of great assistance to the panel. We acknowledge also the frankness of Member B and hope they continue to avail themselves of the assistance of the Law Society.

July 18, 2022



Anthony J. Kavanagh - Panel Chair



Mathieu R. Lafreniere - Bencher and Practising Member



Sandra Oakley - Public Representative

Signed July 24, 2022